

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DWIGHT MANLEY,  
Plaintiff,

v.

MGM RESORTS INTERNATIONAL and  
MGM GRAND HOTEL, LLC,  
Defendants.

Case No. 2:22-cv-01906-MMD-EJY

**ORDER**

Pending before the Court is Plaintiff's Memorandum Supporting Requested Fees (ECF No. 175) and Defendants' Response thereto (ECF No. 176).

"In diversity actions [such as the case before the Court], federal courts are required to follow state law in determining whether to allow attorneys' fees." *Swallow Ranches, Inc. v. Bidart*, 525 F.2d 995, 999 (9th Cir. 1975). Under Nevada law, a prevailing party cannot recover attorney's fees unless authorized by statute, rule, or agreement between the parties. *First Interstate Bank of Nevada v. Green*, 694 P.2d 496, 498 (Nev. 1985). A party can obtain an award of attorney's fees if "the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." NRS 18.010(2)(b). "The court shall liberally construe the provisions of [NRS 18.010(2)(b)] in favor of awarding attorney's fees in all appropriate situations," and "[i]t is the intent of the Legislature that the court award attorney's fees pursuant to [NRS 18.010(2)(b)] ... in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses." *Id.* The award of attorney fees under NRS 18.010(2)(b) is "within the sound discretion of the district court." *Kahn v. Morse & Mowbray*, 117 P.3d 227, 238 (Nev. 2005).

Having previously granted Plaintiff an award of fees incurred in the preparation of his motion for adverse jury instruction and the reply in support thereof, the Court must now consider the reasonable amount of fees to be awarded. The lodestar method is the customary method that the Court uses when determining attorneys' fees. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th

1 Cir. 1996). “The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party  
 2 reasonably expended on the litigation by a reasonable hourly rate.” *Id.*; *see also McGrath v. Cnty.*  
 3 *of Nevada*, 67 F.3d 248, 252 (9th Cir. 1995). The requesting party “has the burden of submitting  
 4 billing records to establish that the number of hours it has requested are reasonable.” *Gonzalez v.*  
 5 *City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). The Court should exclude from the lodestar  
 6 calculation hours that were not “reasonably expended,” including hours that are “excessive,  
 7 redundant, or otherwise unnecessary.” *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983); *see also*  
 8 *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006). If the Court determines some  
 9 requested fees should be excluded as unreasonable, the Court may exclude bill entries pursuant to  
 10 an hour-by-hour analysis. *See Gonzalez*, 729 F.3d at 1203. “The number of hours to be compensated  
 11 is calculated by considering whether, in light of the circumstances, the time could reasonably have  
 12 been billed to a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008).

13 The lodestar amount is a presumptively reasonable fee. *Camacho v. Bridgeport Financial,*  
 14 *Inc.*, 523 F.3d 973, 982 (9th Cir. 2008). Although presumptively reasonable, the Court may adjust  
 15 the lodestar amount based on the *Kerr* factors to account for factors that have not been subsumed in  
 16 the lodestar calculation. *Id.* For example, the Court may exclude hours arising from overstaffing,  
 17 duplication, excessiveness or that are otherwise unnecessary. *See, e.g., Hensley*, 461 U.S. at 434;  
 18 *see also Cruz v. Alhambra School Dist.*, 601 F.Supp.2d 1183, 1191 (C.D. Cal. 2009).

19 The *Kerr* factors include: (1) the time and labor required, (2) the novelty and the difficulty  
 20 of the questions involved, (3) the skill required to perform the legal service properly, (4) the  
 21 preclusion of other employment by the attorney due to the acceptance of the case, (5) the customary  
 22 fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or  
 23 circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and  
 24 ability of the attorney, (10) the “undesirability” of the case, (11) the nature and length of the  
 25 professional relationship with the client, and, (12) awards in similar cases. *Kerr v. Screen Extras*  
 26 *Guild, Inc.*, 525 F.2d 67, 70 (9th Cir. 1975). Further, Local Rule 54-14(b) requires a party seeking  
 27 attorneys’ fees to include: (1) a reasonable itemization and description of the work performed and  
 28 (2) an itemization of all costs sought to be charged as part of the fee award.

1 When determining the reasonable hourly rate to be applied to an award of attorneys' fees,  
 2 the Court must consider the "prevailing market rates in the relevant community" and compare the  
 3 rates of "lawyers of reasonably comparable skill, experience, and reputation" to the rates requested  
 4 in the case before the Court. *Soule v. P.F. Chang's China Bistro, Inc.*, Case No. 2:18-cv-02239-  
 5 GMN-GWF, 2019 WL 3416667, at \*1 (D. Nev. July 26, 2019) (internal citation omitted). This is a  
 6 two-step process. The first step requires the Court to "calculate the lodestar amount by" multiplying  
 7 "the number of hours reasonably expended on the" motion at issue "by a reasonable hourly rate."  
 8 *Id.* (citations omitted). The second step requires the Court to consider adjusting the lodestar amount  
 9 upward or downward, something done "only on rare and exceptional occasions, ... using a multiplier  
 10 based on factors not subsumed in the initial calculation of the lodestar." *Id. citing Van Gerwen v.*  
 11 *Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (internal brackets removed).

12 Starting with the rates requested, Plaintiff seeks \$600 an hour for Paul Hejmanowski and  
 13 \$500 an hour for Charles McCrea. ECF No. 175 at 4. Mr. Hejmanowski and Mr. McCrea "have  
 14 been lawyers for over 50 years," have distinguished careers, and accolades recognized in Nevada  
 15 and nationally. *Id.* Without disputing the training, experience or reputation ascribed to Plaintiff's  
 16 counsel, Defendants argue Plaintiff fails to establish that the rates requested are in line with  
 17 community standards. ECF No. 176 at 4. Defendants cite cases dating back 10 to 12 years, while  
 18 also citing a 2020 decision from this district that found a billing rate of \$645 an hour for a senior  
 19 partner with 47 years of experience reasonable. *Id.* at 4-5.

20 There are a variety of opinions available from the District of Nevada discussing the  
 21 community's prevailing rates, but in March 2025, the Court stated:

22 Hourly rates of \$550 to \$750 have been found reasonable for attorneys with 38 or  
 23 more years of experience. *See Flynn v. Love*, No. 3:19-cv-00239-MMD-CLB, 2023  
 24 WL 3080494, at \*3 (D. Nev. Apr. 25, 2023) (\$650 rate for attorney with some 50  
 25 years of experience); *Flynn v. Love*, 3:19-cv-00239-MMD-CLB, 2022 WL  
 26 2918989, at \*3 (D. Nev. July 25, 2022) (\$550 for attorney with 40 years of  
 27 experience); *Winecup Gamble, Inc. v. Gordon Ranch, LP*, No. 3:17-cv-00163-RCJ-  
 28 WGC, 2021 WL 434201 (D. Nev. February 8, 2021) (\$641 for a Nevada attorney  
 with more than 30 years of experience.) Hourly rates of \$500 to \$641 have been  
 found reasonable for attorneys with between 17 and 38 years of experience. *See*  
*WSOU Invs., LLC v. Salesforce, Inc.*, No. 3:23-CV-00023-RCJ-CSD, 2024 WL  
 307617, at \*5 (D. Nev. Jan. 26, 2024) (\$600 for attorneys with 23 years of  
 experience); *Smith & Wesson Brands, Inc. v. SW North America, Inc.*, No. 2:22-cv-

1 01773-JCM-EJY, 2023 WL 7279950, at \*3 (D. Nev. Nov. 3, 2023) (\$550 for  
2 attorney with over 25 years of experience).

3 *Semas v. Chemetall US, Inc.*, Case No. 3:19-cv-00125-CLB, 2025 WL 822932, at \*10 (Mar. 14,  
4 2025). Here, the Court finds the years of experience, well established reputation of the lawyers  
5 involved, and skill these lawyers bring to this case support the hourly rates requests as consistent  
6 with the prevailing rates in Nevada, and with rates awarded lawyers of reasonably comparable skill,  
7 experience, and reputation. The rates of \$600 an hour for Mr. Hejmanowski and \$500 an hour for  
8 Mr. McCrea are approved.

9 Turning to the time charged to the task for which fees were awarded, the Court returns to the  
10 *Kerr* factors and Local Rule 54-14. Counsel for Plaintiff provides their billing records and say no  
11 costs are sought. ECF No. 175 at 3. Counsel also points to the Court's May 15, 2025 Order granting  
12 Plaintiff's motion, in part, and awarding fees. *Id.* Plaintiff seeks \$20,955 in fees for the work  
13 performed over 38.5 hours. *Id.* Plaintiff admits the issues addressed in his motion were not unique,  
14 but says experienced counsel was needed to perform the services required. *Id.* No other employment  
15 was precluded by virtue of the work performed on the motion for adverse jury instruction, there was  
16 no unusual time limitation, the case was not undesirable, and awards in similar cases is unknown.  
17 *Id.* at 3-5. Defendants point to the billing records that reflect block billing, entries unrelated to  
18 Plaintiff's motion and reply brief, the time spent conducting research that was excessive, and certain  
19 tasks that are not ones for which fees should be awarded. EFC No. 176 at 6-7. Defendants contend  
20 fees "in the range of \$5,000.00" are appropriate. *Id.* at 7.

21 The Court first considers time billed to prepare and file the motion for adverse jury  
22 instruction. In this regard, it appears Mr. Hejmanowski did the bulk of the work researching,  
23 drafting, and finalizing the motion (entries dated 11/04/24 through 1/12/24 totaling 17.5 hours).<sup>1</sup>  
24 The Court finds these billing entries reasonable. However, after Mr. Hejmanowski "finalized" the  
25 motion, Mr. McCrea apparently reviewed Mr. Hejmanowski's work resulting in 2.8 hours of billed  
26 time. This is duplicative and unnecessary work as Mr. Hejmanowski is more than sufficiently

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27 <sup>1</sup> Excluded from this time calculation is .2 hours spent by Mr. McCrea stated as "work on motion for adverse  
28 inference," a teleconference with Mr. McCrea (.25 hours), and communication with Katie Cannata (unidentified, but  
presumed to be a paralegal) that is block billed with legal research (2.25 hours).

1 knowledgeable, skilled, and capable of drafting a non-unique motion seeking an adverse jury  
2 instruction for lost relevant evidence. Thus, the Court awards fees for 17.5 hours of time at \$600 an  
3 hour for Mr. Hejmanowski's preparation of the motion for adverse jury instruction, but denies the  
4 time billed by Mr. McCrea.

5 Mr. McCrea and Mr. Hejmanowski appear to work together to review Defendants' response  
6 to the motion and prepare the reply; although, Mr. McCrea clearly took the laboring oar on this task.  
7 ECF No. 175 at 7-8. The Court discounts these entries for conferences between these two extremely  
8 experienced lawyers, as well as Mr. Hejmanowski's 2.25 hours spent "[a]nalyzing the opposition ...  
9 and formulating ... [the] reply" and 2.00 hours spent finalizing the reply researched and drafted by  
10 Mr. McCrea. The total amount of time deducted is 4.25 hours. The Court awards 11.3 hours for  
11 work performed by Mr. McCrea associated with preparing for and drafting the reply.

12 Thus, the total award of fees is as follows:

13 17.5 hours at \$600 an hour for Mr. Hejmanowski, equaling \$10,500.00; and

14 11.3 hours at \$500 an hour for Mr. McCrea, equaling \$5,650, for a total award of \$16,150.00.

15 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Memorandum Supporting  
16 Requested Fees is approved to the extent that the Court finds an award of fees in the amount of  
17 \$16,150 is granted.

18 IT IS FURTHER ORDERED that Defendants must reimburse Plaintiff in the amount  
19 awarded within thirty (30) days of the date of this Order; provided, however, that this award is  
20 automatically stayed if a timely objection is filed.

21 Dated this 26th day of June, 2025.

22   
23 ELAYNA J. YOUCHAH  
24 UNITED STATES MAGISTRATE JUDGE  
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